

OPINION
55-18

May 25, 1955 (OPINION)

CITIES

RE: Appointment of Assistant City Attorney

We have your letter of May 23, 1955, in which you ask for an opinion relative to the appointment of an assistance city attorney and the performance of his duties.

The first question you raise is with reference to the statutory provisions concerning the appointment of an assistance city attorney.

Section 40-2002 of the 1953 Supplement to the North Dakota Revised Code of 1943 reads as follows:

ASSISTANCE CITY ATTORNEYS: APPOINTMENT: SPECIAL COUNSEL AUTHORIZED. With the consent and approval of the governing body of the city, the city attorney may appoint assistants to do any or all of the acts which the city attorney is required to do under this chapter, but the city attorney shall be responsible to the city for the acts of such assistants. The governing body of the city, however, may employ and pay special counsel when it deems such counsel to be necessary for the best interests of the city."

We take this to mean that before the city attorney may appoint an assistant or assistants he must obtain the consent of the governing body of the city, and after making this appointment the appointment must be approved by the governing body of the city. Of course, it is clear that the governing body may employ and pay special counsel when it deems such counsel to be necessary for the best interests of the city. Further, the consent and approval of the governing body should be a part of the minutes of the meeting where such action is taken.

You further raise the question whether old appointments hold over.

Section 40-1505 of the North Dakota Revised Code of 1943 reads as follows:

At the first meeting after the qualification of its members, or as soon thereafter as possible, the board of city commissioners shall appoint the following officers:

. . . .

3. An attorney;

. . . ."

However, under section 40-1506, we read that "The terms of all appointive officers of a city operating under the commission system of government shall commence on the first day of may succeeding their

appointment unless otherwise provided by ordinance, and such officers shall hold their respective offices for such term as has been provided for by ordinance, and until their respective successors are qualified."

It would be our judgment that a city attorney would hold over until his successor has qualified and the same would apply to his assistant.

Now, as to the performance of the duties of a city attorney, those duties are set forth in section 40-2001 of the North Dakota Revised Code of 1943.

In our opinion these official duties must be performed by the city attorney or by his duly appointed, qualified, and acting assistant, or assistants.

We must bear in mind, of course, that under section 40-2002 of the 1953 Supplement, the governing body may employ special counsel when it deems such counsel necessary for the best interests of the city. But ordinarily the duties outlined in section 40-2001 of the North Dakota Revised Code of 1943 are to be performed by the city attorney or his assistant, or assistants, as well as all other duties as may be prescribed by the governing body, or by the ordinance of the city, or by the statutes of the state.

LESLIE R. BURGUM

Attorney General